ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 176.430, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100 - 224.71-145, 224.73-100 - 224.73-120, 30 U.S.C. 1201 -1328

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 requires[~~declares~~] that the policy of the Commonwealth is to conserve its waters for legitimate uses, safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water

pollution in waters affected by that policy.

Section 1. Categorization and Implementation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029, Section 1, for a point source discharge. Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1

SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER

Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	50.3 to 70.4 [~~49.2 to 68.6~~]	Menifee/Powell/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/ Hart/Barren
South Fork of Cumberland River	Downstream Wild River Boundary to Tennessee State line	44.3 to 54.8	McCreary
Surface Waters within	Reelfoot Lake National	2040 Acres	Fulton

Reelfoot Lake National Wildlife Refuge	Wildlife Refuge Proclamation Boundary in Kentucky		
War Fork of Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 14.7 [~~15.0~~]	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	8.95 to 22.4	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031, Section 8; and

2. The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in an outstanding national resource water.

2. A new discharger or expanded discharge that may result in permanent or long-term changes in water quality shall be prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as an exceptional water are listed in Table 2 of this subsection.

Table 2

SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek*	Mouth to Headwaters	0.0-3.9	Martin
Lower Pigeon Branch of Elkhorn Creek*	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River*	Clinch Field RR Yard off HWY 80 to Virginia State Line	15.0-16.5	Pike
Toms Branch of Elkhorn Creek*	Mouth to Headwaters	0.0-1.6	Pike
Thompson Fork of Souders Branch	Mouth to Headwaters	0.0 – 1.0	Floyd
Unidentified Tributary of Hobbs Fork*	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
Unidentified Tributary of	Moth to Headwaters	0.0 – 0.8	Morgan

Open Fork Paint Creek			
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek*	Clay Fork to Headwaters	0.0-5.1	Elliott
Big Caney Creek*	Grayson Lake to Headwaters	1.8-15.3	Elliott, Rowan
Big Sinking Creek of Little Sandy River*	SR 986 to Clay Fork and Arabs [~~Arab~~] Fork	11.0 – 15.9 [~~6.1-15.8~~]	Carter, Elliott
Meadow Branch of Little Fork of Little Sandy River*	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork of Little Sandy River*	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Fork of Little Sandy River*	Green Branch to Headwaters	0.0-2.0	Elliott
Laurel Creek of Little Sandy River*	Carter School Rd Bridge to Headwaters	7.6-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River*	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River*	Mouth to Landuse Change	0.0-2.1	Menifee

Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek*	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek*	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork of Licking River*	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork of Licking River*	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek*	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.3 – 170.5 [~~159.5 - 170.6~~]	Bath, Rowan
North Fork of Licking River*	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan

Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River*	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork of Licking River*	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River*	Mouth to Headwaters	0.0-9.8	Harrison, Robertson
KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River*	Mouth to Scrabble Creek	0.0-1.65	Franklin, Henry, Shelby
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River*	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-4.4	Clay

Bill Branch of Laurel Fork of Greasy Creek*	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Boyd Run of North Elkhorn Creek	Mouth to Cherry Run	0.0-0.9	Scott
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
Bullskin Creek of South Fork Kentucky River	Mouth to Headwaters	0.0 – 14.6	Clay
Buffalo Creek of South Fork of Kentucky River*	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Cavanaugh Creek*	South Fork of Station Camp Creek to Foxtown Rd	0.0-8.3	Jackson
Chester Creek of Middle Fork of Red River*	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River*	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-4.8	Breathitt
Coles Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky	Mouth to Unidentified	0.5-2.7	Woodford

River*	Tributary		
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River*	Fivemile Creek to Town Branch	8.7-12.2	Henry
East Fork of Indian Creek of Indian Creek of Red River*	West Fork of Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River*	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billey Fork of Millers Creek *	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2.6	Anderson
Gladie Creek of Red River*	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie

of Kentucky River			
Griers Creek of Kentucky River*	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River*	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork of Kentucky River*	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek*	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek*	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn	Mouth to Headwaters	0.0-1.2	Breathitt

Creek*			
Joyce Fork of Cortland Fork	Mouth to Headwaters	0.0 – 1.2	Owsley
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork of Big Double Creek of Kentucky River*	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River*	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River*	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-5.3	Henry
Little Sturgeon Creek of Sturgeon Creek	Mouth to Warren Chapel Branch	0.0 – 3.0	Owsley
Low Gap Branch of Elk Creek	Mouth to Headwaters	0.0 – 0.8	Letcher

Lower Devil Creek of North Fork Kentucky River	Mouth to Middle Fork Lower Devil Creek	0.0 – 4.65	Lee
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork of Kentucky River*	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-7.2	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River*	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River*	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle	Mouth to Headwaters	0.0-9.0	Grant

Creek*			
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork of Buffalo Creek of Kentucky River*	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek*	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River*	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork*	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River*	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley

South Fork of Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork of Station Camp Creek of Kentucky River*	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River*	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River*	Landuse Change to South Fork of Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette
Steer Fork of War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River*	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River*	Landuse Change to Headwaters	0.6-5.4	Leslie
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork*	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky	Mouth to Headwaters	0.0-1.4	Owen

River*			
Unidentified Tributary of Glenns Creek of Kentucky River*	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River*	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River*	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork of Kentucky River* (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River*	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River*	Mouth to Greens Branch	0.0-5.2	Bullitt

Chaplin River of Salt River*	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0- 2.3 [~~1.8~~]	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River*	Mouth to 0.1miles below Dam	0.0-4.1	Washington
Otter Creek of Rolling Fork of Salt River*	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters of Middle Fork of Overalls Creek	0.0-3.2	Bullitt
Salt Lick Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-8.6	Larue, Marion

Sulphur Creek of Chaplin River*	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0.0-2.3	Washington
West Fork of Otter Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0- 5.4 [~~5.1~~]	Larue
Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River*	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River*	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek*	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River*	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek*	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork of Little Barren	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe

River*			
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Logan ~~[Allen]~~
Ellis Fork of Damron Creek*	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek*	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork of Rough River*	Mouth to Headwaters	0.0-5.9	Breckinridge
Forbes Creek of Buck Creek of East Fork of Pond River*	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River*	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River*	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	185.0-250.3	Edmonson, Hart
Halls Creek of Rough River*	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork of Drakes Creek*	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River*	Mouth to Sutzer Creek	0.0-7.9	Hardin

Little Beaverdam Creek of Green River*	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River*	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River*	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork of Pond River*	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River*	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River*	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork of Rough River*	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River*	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River*	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River*	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River*	Mouth to Columbia WWTP	0.0-40.0	Green, Adair

Russell Creek of Green River*	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek*	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek*	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek*	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River*	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek*	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork of Pond River*	Unidentified Tributary to East Branch of Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River*	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River*	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork of Red River of	Tennessee State Line to Dry	7.5-23.1	Todd

Cumberland River*	Branch		
Sugar Creek of Cumberland River*	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork of Red River of Cumberland River*	Tennessee State Line to Montgomery Creek	14.75 – 26.85 [~~16.1-26.5~~]	Christian
Whippoorwill Creek of Red River of Cumberland River*	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River)*	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28.6 – 30.6 [~~28.7-30.7~~]	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork of Clarks River*	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River)*	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway

Sugar Creek of West Fork Clarks River*	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork of Clarks River*	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River*	Mouth to Headwaters	0.0-1.7	Graves
West Fork of Clarks River*	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)*	Ralph Wright Road Crossing to Headwaters	3.6 [~~2.8~~] -6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River*	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River*	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of Tradewater River*	Camp Creek to Headwaters	4.5-8.6	Christian
Tradewater River*	Dripping Springs Branch to Buntin Lake Dam	125.8 [~~126.2~~] -133.9	Christian
Unidentified Tributary of	Mouth to Headwaters	0.0-2.9	Caldwell

Piney Creek of Tradewater River*			
Unidentified Tributary of Sandlick Creek of Tradewater River*	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
Ashbys Fork	Mouth to Petersburg Road (SR 20)	0.0 – 3.7	Boone
Crooked Creek*	Rush Creek to City Lake Dam	17.9 – 26.2 [~~18.1 26.4~~]	Crittenden
Double Lick Creek of Woolper Creek*	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek*	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek*	McDowell Creek to Headwaters	5.05 [~~5.2~~] - 50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek*	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek*	Ohio River Backwaters to Headwaters	0.2 – 2.7 [~~0.4 2.9~~]	Boone
Unidentified Tributary of	I-71 to Headwaters	1.0- 3.5 [~~1.8~~]	Gallatin

Big Sugar Creek*			
Unidentified Tributary of Corn Creek*	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tributary of Unidentified Tributary of Corn Creek	Unidentified Tributary to Headwaters	0.15 – 2.2	Trimble
Unidentified Tributary of Massac Creek*	Mouth to Headwaters	0.0-1.7	McCracken
West Fork of Massac Creek*	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek*	Ohio River Backwaters to Headwaters	1.5 – 11.8 [~~2.0-12.0~~]	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek*	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek*	Hurricane Creek to Little Creek	26.35 – 36.5 [~~26.7-37.1~~]	Hickman
Terrapin Creek*	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			

Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			
Bad Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River*	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River*	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River*	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek *	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek*	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River*	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski

Bunches Creek of Cumberland River*	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River*	Mouth to Headwaters	0.0-11.85	Laurel
Clear Creek of Roundstone Creek	Scaffold Cane Branch to Davis Branch	3.45 – 7.8	Rockcastle
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek*	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River*	Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River*	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork of Cumberland River*	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River*	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River*	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton

Indian Creek of Cumberland River*	Laurel Fork to Barren Fork	2.4-6.8	McCreary
Jackie Branch of Bark Camp Creek*	Mouth to Headwaters	0.0-1.65	Whitley
Kettle Creek	Kentucky / Tennessee State Line to Wells Creek	1.75 – 6.1	Monroe
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River*	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River*	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork of Cumberland River*	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
Little White Oak Creek	Mouth to Headwaters	0.0 – 2.6	Laurel
Marsh Creek of Cumberland River*	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary

Martins Fork of Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork of Rockcastle River*	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River*	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River*	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne
Poor Fork of Cumberland River*	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of South Fork of	White Oak Creek to	4.0-21.5	McCreary

Cumberland River*	Tennessee State Line		
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek*	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River*	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River*	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River*	Mouth to Headwaters	0.0-4.6	Whitley
South Fork of Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary of Cane Creek of Rockcastle River	Mouth to Headwaters	0.0 – 1.2	Laurel
Unidentified Tributary (across from Hemlock Grove) at River mile 9.3 of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.05 [~~17.0~~] of Rock Creek)	Mouth to Headwaters	0.0- 1.9 [~~1.2~~]	McCreary

of Rock Creek of South Fork of Cumberland River*			
Watts Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River*	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as established in 401 KAR 10:031, Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in Development and Application of the Kentucky Index of Biotic Integrity (KIBI), 2003; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure. The implementation procedure for exceptional water shall be

as established in subsection (3)(b) of this section.

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026 and is not listed as an outstanding national resource water in Table 1 or an exceptional water in Table 2 of this section.

(b) Implementation procedure. A KPDES permit application for a new or expanded discharge into a high quality or exceptional water shall be subject to the provisions of this paragraph. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

1. The activities identified in this subparagraph shall not be subject to the antidegradation implementation procedures in paragraph (b) of this subsection.

a. The renewal of a KPDES permit that does not authorize pollutant loading to the receiving stream in excess of that previously authorized;

b. An increase in pollutant loading within the limits previously approved by the KPDES permit; or

c. A new or expanded discharge that the applicant demonstrates shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution for each new or increased pollutant in the

discharge. The cumulative impact of this category of discharges shall not consume more than ten (10) percent of the available assimilative capacity of the receiving stream outside of a designated mixing zone or zone of initial dilution.

2. The activities identified in clauses a. through d. of this subparagraph shall constitute compliance with the alternatives and socioeconomic analysis requirements if addressed in the manner established in this subparagraph rather than as established in subparagraph 3. of this paragraph, unless the permittee chooses to satisfy applicable antidegradation requirements pursuant to subparagraph 3. of this paragraph.

a. A general permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) The cabinet may, upon receipt of a notice of intent to be covered under a general permit, require additional analyses or other information if necessary to comply with antidegradation requirements.

(ii) If the activity permitted by the general permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the general permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph upon each general permit issuance.

(iii) If the requirements and conditions in a general permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the general permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.

(iv)The public shall be notified of an activity granted coverage under a general permit on the cabinet's Web page, which shall include the facility name, location, and receiving water.

b. The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall constitute compliance with the alternatives analysis and socioeconomic demonstration for a

regional facility.

c. A new or expanded discharge associated with a project identified in the Kentucky Transportation Cabinet's six (6) year road plan, as established in KRS 176.430.

(i) The alternatives analysis for lowering water quality requirement shall be satisfied if an alternatives analysis for the project has been submitted.

(ii) The socioeconomic demonstration shall be satisfied if the project has been approved by the General Assembly and included in the Kentucky Transportation Cabinet's six (6) year road plan and evaluated pursuant to the provisions of KRS 176.430(4)(i).

(iii)An antidegradation review shall not be required for maintenance of existing highway facilities.

d. An individual MS4 permit issued pursuant to 401 KAR 5:050 through 5:080.

(i) If the activity permitted by the MS4 permit may result in a lowering of water quality, the cabinet shall describe in the Fact Sheet how the MS4 permit complies with the alternatives analysis and socioeconomic demonstration requirements of subparagraph 3.a. and b. of this paragraph.

(ii) If the requirements and conditions in the MS4 permit will prevent a lowering of water quality, the cabinet shall describe in the Fact Sheet that the MS4 Permit complies with the antidegradation policy established in 401 KAR 10:029, Section 1.[.]

3. An application for a KPDES permit subject to this paragraph shall contain information demonstrating that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. The socioeconomic demonstration shall consider the following factors:

(i) The boundaries of the affected community;

(ii) The potential effect on employment, including a comparison of local unemployment rates and state and national unemployment rates;

(iii) The potential effect on median household income levels, including a comparison of the present median household income level, projected median household income level, and number of households affected in the defined community;

(iv) The potential effect on tax revenues, including current tax revenues in the affected community compared to projected increase in tax revenues generated by the permitted project;

(v) The potential effect of the facility on the environment and public health; and

(vi) Other potential economic or social effect to the community that the applicant includes in the application.

b. The alternatives analysis shall consider the following factors:

(i) Pollution prevention measures, such as changes in plant processes, source reductions, or substitution with less toxic substances;

(ii) The use of best management practices to minimize impacts;

(iii) Recycle or reuse of wastewater, waste by-products, or production materials and fluids;

(iv) Application of water conservation methods;

(v) Alternative or enhanced treatment technology;

(vi) Improved operation and maintenance of existing treatment systems;

(vii) Seasonal or controlled discharge options;

(viii) Land application or infiltration to capture pollutants and reduce surface runoff, on-site treatment, or alternative discharge locations; and

(ix) Discharge to other treatment facilities.

c. Information required pursuant to this subparagraph shall be submitted on the

Socioeconomic Demonstration and Alternatives Analysis form.

4. A permit applicant who has failed to demonstrate the necessity and social or economic development importance for lowering water quality shall not receive a permit unless:

a. The applicant demonstrates, through a revised submission, the necessity for lowering revised water quality in accordance with subparagraph 3. of this paragraph; or

b. The applicant demonstrates that the discharge can meet the requirements established in subparagraph 1.c. of this paragraph.

5. A permit applicant who demonstrates the necessity and social or economic development importance for lowering water quality shall meet the requirements of the KPDES program, 401 KAR 5:050 through 5:080.

6. The cabinet's determination shall be documented in the permit Fact Sheet and included in the administrative record for the permit or action.

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315(b).

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting[~~any~~] applicable designated uses.

2. A surface water designated as outstanding state resource water pursuant to the provisions of 401 KAR 10:031**,** Section 8 and listed in 401 KAR 10:026 Table C as an OSRW shall not be categorized as impaired water for the purposes of this administrative regulation.[~~A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026.~~]

3. A surface water shall not be categorized as impaired for the purposes of this

administrative regulation if the surface water is listed only as mercury impaired for fish consumption.

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050 through[-] 5:080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026.

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this

section.

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and[~~any~~] comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, 33 U.S.C. 1313, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A USGS 7.5 minute topographic map or its equivalent showing those surface waters to be recategorized including a description consisting of a river mile index with[~~any~~] existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for

which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of[~~any~~] unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. Specific land uses adjacent to the surface water for which the recategorization is

proposed;

3. The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3. of this administrative regulation are utilized.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet; and

(c) "Socioeconomic Demonstration and Alternative Analysis", KPDES Form SDAA, April 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

401 KAR 10:030 “Antidegradation policy implementation methodology.” approved for promulgation:

_____ _____

Date Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2012 at 5:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky.

Individuals interested in being heard at this hearing shall notify this agency in writing by September 17, 2012, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter Goodmann
Division of Water
200 Fair Oaks Lane
Frankfort, KY 40601
Telephone: (502) 564-3410 Fax (502) 564-0111
Email: Peter.Goodmann@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 10:030
Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment includes 13 additional stream segments totaling 44.3 miles of surface waters newly categorized as exceptional water as a result of routing watershed monitoring and investigations of potential waters affected by permitted activities since the previous revisions to the regulations in 2008. Other minor amendments are proposed to comply with regulation drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add waters that have been found to meet the criteria for Exceptional Water since the previous revisions. Other minor amendments are proposed to comply with regulation drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the Environmental and Public

Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment adds water segments that meet the criteria for Exceptional Waters.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by listing surface waters newly categorized as exceptional.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation includes 13 additional stream segments, totaling 44.3 miles of surface waters, newly categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional water or high quality water could be affected by either stricter discharge limitations or the requirement to perform an alternatives analysis and socioeconomic demonstration.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded point source dischargers covered under the Section 402 KPDES permit system may incur costs of alternatives and pollution prevention and socioeconomic analyses. This requirement already exists in state and federal law.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Costs cannot be determined until an applicant applies for a permit for a new or expanded discharge, which is regulated under 401 KAR Chapter 5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no initial costs as a result of amending this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of amending this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of

this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes, tiering is used in this administrative regulation. However, the amendment does not change the way the regulation is tiered. This regulation tiers the requirements of the antidegradation policy implementation based on the water quality where the applicant proposes to discharge. There are three tiers of implementation of the antidegradation policy.

The requirements for the most protected waters, Outstanding National Resource Waters, are established in Section 1(1)(b). A discharger may not discharge into an Outstanding National Resource Water if the discharge may result in permanent or long-term changes in water quality.

The majority of waters in the Commonwealth are in the second tier, Exceptional or High Quality Waters. The requirements for discharges to these categories of water are established in Section 1(3)(b). Applicants proposing a new or expanded discharge to these second-tier waters must demonstrate that the discharge will not exceed ten percent of the cumulative assimilative capacity of the receiving stream outside of a mixing zone, or demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the water is located.

The final tier of requirements is for Impaired Waters, established in Section 1(4)(b). The process to allow a discharge into an impaired water and to assure protection of the water shall be regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 10:030 **Contact Person:** Sandy Gruzesky, Director

1. **What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters, exceptional waters, or high quality waters.

2. **Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

3. **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**
   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.
   (c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.
   (d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 10:030
Contact Person: Sandy Gruzesky, Director

1. **Federal statute or regulation constituting the federal mandate.** There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. **State compliance standards.** KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110

3. **Minimum or uniform standards contained in the federal mandate.** The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards. 40 C.F.R. 130, 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

4. **Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?** No.

5. **Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** There are no stricter standards or additional or different responsibilities or requirements.